USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: ________________
DATE FILED: April 4, 2017

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ELENA STRUJAN,

Plaintiff,

-v.-

STATE FARM INSURANCES, a fiction; *et al.*,

Defendants.

17 Civ. 163 (KPF)

ORDER

KATHERINE POLK FAILLA, District Judge:

Plaintiff Elena Strujan filed this action *pro se* on January 10, 2017. (Dkt. #1). On February 13, 2017, the Court dismissed the complaint on immunity grounds and for failure to state a claim. (Dkt. #8). On February 16, 2017, Plaintiff filed a motion for reconsideration, challenging the February 13, 2017 dismissal order. (Dkt. #11).

The Court liberally construes this submission as a motion under Fed. R. Civ. P. 59(e) to alter or amend judgment and a motion under Local Civil Rule 6.3 for reconsideration, and, in the alternative, as a motion under Fed. R. Civ. P. 60(b) for relief from a judgment or order. *See Triestman* v. *Fed. Bureau of Prisons*, 470 F.3d 471, 474 (2d Cir. 2006); *see also Tracy* v. *Freshwater*, 623 F.3d 90, 101 (2d Cir. 2010) (observing that the solicitude afforded to *pro se* litigants takes a variety of forms, including liberal construction of papers, "relaxation of the limitations on the amendment of pleadings," leniency in the enforcement of other procedural rules, and "deliberate, continuing efforts to ensure that a *pro se* litigant understands what is required of [her]" (citations omitted)). After reviewing the arguments in Plaintiff's submission, the Court denies the motion.

DISCUSSION

The standards governing Fed. R. Civ. P. 59(e) and Local Civil Rule 6.3 are the same. *R.F.M.A.S., Inc.* v. *Mimi So*, 640 F. Supp. 2d 506, 509 (S.D.N.Y. 2009). The movant must demonstrate that the Court overlooked "controlling law or factual matters" that had been previously put before it. *Id.* (discussion in the context of both Local Civil Rule 6.3 and Fed. R. Civ. P. 59(e)); *see Padilla* v. *Maersk Line, Ltd.*, 636 F. Supp. 2d 256, 258-59 (S.D.N.Y. 2009). "Such motions must be narrowly construed and strictly applied in order to discourage litigants from making repetitive arguments on issues that have been thoroughly considered by the court." *Range Road Music, Inc.* v. *Music Sales Corp.*, 90 F. Supp. 2d 390, 391-92 (S.D.N.Y. 2000); *see also SimplexGrinnell LP* v. *Integrated Sys. & Power, Inc.*, 642 F. Supp. 2d 206, 210 (S.D.N.Y. 2009) ("A motion for reconsideration is not an invitation to parties to 'treat the court's initial decision as the opening of a dialogue in which that party may then use such a motion to advance new theories or adduce new evidence in response to the court's ruling.'" (internal quotation and citations omitted)).

In her motion, Plaintiff argues, among other things, that (i) the Court erred by treating her pleading as a civil complaint, rather than a petition for a writ of *habeas corpus*; (ii) staff in the Clerk of Court's office made errors in scanning the complaint, leading the Court to dismiss this action based upon an incomplete or inaccurate record; and (iii) Plaintiff should be permitted to proceed against Defendants under various criminal statutes. None of these arguments has merit.

First, Plaintiff's pleading is not a *habeas* petition. *Habeas* relief is limited to the class of persons listed in 28 U.S.C. § 2241(c)(1)-(5). The United States Supreme Court has interpreted this provision as "requiring that the *habeas* petitioner be 'in custody' under the conviction or sentence under attack at the time [her] petition is filed." *Maleng* v. *Cook*, 490 U.S. 488, 490-91 (1989); *see also Scanio* v. *United States*, 37 F.3d 858, 860 (2d Cir. 1994). Plaintiff has neither alleged that she is in custody nor sought release from custody, both of which are hallmarks of a proper *habeas* petition. *See* 28 U.S.C. § 2241(c)(1)-(5). In fact, the allegations in the complaint and in Plaintiff's motion plainly demonstrate that she is at liberty. Moreover, Plaintiff seeks monetary damages, but monetary damages are not available in a *habeas* action. *See Preiser* v. *Rodriguez*, 411 U.S. 475, 488 (1973); *Hardy* v. *Fischer*, 701 F. Supp. 2d 614, 620 (S.D.N.Y. 2010) (citation omitted). The Court therefore properly construed the pleading as a civil complaint.

Second, the alleged scanning errors described in the motion did not cause the complaint to be dismissed. After receiving Plaintiff's motion, the Court reviewed the entire complaint in the Court's file. Nothing in the complaint or its attachments suggests that the judges and State defendants are not entitled to immunity, or that the complaint states a claim for relief against any of the other defendants. There is no reason to disturb the Court's conclusion that the action must be dismissed.

Third, there is no private cause of action under any of the criminal statutes that Plaintiff cites. Because private citizens cannot prosecute a criminal action in federal court, violations of federal criminal statutes cannot provide the basis for a civil action. *See Leeke* v. *Timmerman*, 454 U.S. 83, 85-86 (1981) (a private citizen lacks a judicially recognizable interest in the prosecution or nonprosecution of another); *Robinson* v. *Overseas Military Sales Corp.*, 21 F.3d 502, 511 (2d Cir. 1994) (criminal statutes do not provide private causes of action); *see also Storm-Eggink* v. *Gottfried*, 409 F. App'x 426, 427 (2d Cir. 2011) (no private action under either 18 U.S.C. §§ 241 or 242) (summary order); *Bender* v. *City of New York*, No. 09 Civ. 3286 (BSJ), 2011 WL 4344203, at *2 (S.D.N.Y. Sept. 14, 2011) (no private right of action under 18 U.S.C. § 1512); *Winslow* v. *Romer*, 759 F. Supp. 670, 674 (D. Colo. 1991) (no private right of action under 18 U.S.C. § 2071). Instead, criminal prosecutions of federal crimes are within the sole province of federal prosecutors who are "immune from control or interference by citizen or court." *Conn. Action Now, Inc.* v. *Roberts Plating Co.*, 457 F.2d 81, 87 (2d Cir. 1972). For those reasons, Plaintiff may not proceed under the criminal statutes that she cited.

In short, Plaintiff has failed to demonstrate in her motion that the Court overlooked any controlling decisions or factual matters with respect to the dismissed action. Plaintiff's motion under Fed. R. Civ. P. 59(e) and Local Civil Rule 6.3 is therefore denied.

Under Fed. R. Civ. P. 60(b), a party may seek relief from a district court's order or judgment for the following reasons:

> (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or other misconduct of an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason justifying relief.

Fed. R. Civ. P. 60(b).

The Court has considered Plaintiff's arguments, and even under a liberal interpretation of her motion, Plaintiff has failed to allege facts demonstrating that any of the grounds listed in the first five clauses of Fed. R. Civ. P. 60(b) apply. Therefore, the motion under any of these clauses is denied.

To the extent that Plaintiff seeks relief under Fed. R. Civ. P. 60(b)(6), the motion is also denied. "[A] Rule 60(b)(6) motion must be based upon some reason other than those stated in clauses (1)-(5)." *United Airlines, Inc.* v. *Brien*, 588 F.3d 158, 175 (2d Cir. 2009) (quoting *Smith* v. *Sec'y of HHS*, 776 F.2d 1330, 1333 (6th Cir. 1985)). A party moving under Rule 60(b)(6) cannot circumvent the one-year limitation applicable to claims under clauses (1)-(3) by invoking the residual clause (6) of Rule 60(b). *Id.* A Rule 60(b)(6) motion must show both that the motion was filed within a "reasonable time" and that "'extraordinary circumstances' [exist] to warrant relief." *Old Republic Ins. Co.* v. *Pac. Fin. Servs. of America, Inc.*, 301 F.3d 54, 59 (2d Cir. 2002) (per curiam) (citation omitted). Plaintiff has failed to allege any facts demonstrating that extraordinary circumstances exist to warrant relief under Fed. R. Civ. P. 60(b)(6). *See Ackermann* v. *United States*, 340 U.S. 193, 199-202 (1950).

CONCLUSION

Accordingly, Plaintiff's motion for reconsideration (Dkt. #11) is denied.

Plaintiff's case in this Court under Docket No. 17 Civ. 163 (KPF) is closed, though the Court will accept for filing documents that are directed to the Second Circuit Court of Appeals. Plaintiff is reminded that Rule 11 of the Federal Rules of Civil Procedure requires all litigants presenting a motion to make reasonable inquiry into whether their claims are warranted by law or have factual support. If Plaintiff files a future reconsideration motion or other filing that repeats the same arguments or is also meritless, the Court will direct that no further documents be accepted for filing for filing in this action, unless Plaintiff shows cause why such an order would be inappropriate. *See Viola* v. *United States*, No. 07-2245-cv, 2009 WL 137029, at *1 (2d Cir. Jan. 21, 2009) (holding that district courts must provide "notice and an opportunity to be heard prior to issuing [a] filing injunction").

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge* v. *United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: April 4, 2017
New York, New York

KATHERINE POLK FAILLA
United States District Judge

Sent by First Class Mail to:
Elena Strujan
P.O. Box 20632
New York, NY 10021